

# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE*

Molly Joseph Ward  
Secretary of Natural Resources

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Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO HIGHLAND COUNTY SCHOOL BOARD**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and the Highland County School Board for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

#### **SECTION B: Definitions**

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14.
9. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
12. "School Board" means the Highland County School Board, a body corporate under Va. Code [§ 22.1-71](#) that is charged with the supervision of schools within the County of Highland, Virginia. The School Board is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The Highland County School Board (School Board) is a body corporate under Va. Code §22.1-71 and is responsible for the operation and maintenance of the facilities that comprise the Highland County High School (the School), a public school located at 430 Myers-Moon Road in the Town of Monterey, within Highland County, Virginia.
2. On July 4, 2016, DEQ staff received notification that approximately 50 gallons of No. 2 fuel oil was discharged from the subsurface supply lines serving a 4,000-gallon heating oil AST system located at the School, and impacted approximately 7,920 linear feet of an unnamed tributary to the Jackson River (the tributary). The AST system was shut down and clean-up activities were initiated upon discovery, which included the placement of sorbent booms and pads within the tributary. The discharge was originally reported to the Town of Monterey Fire Department that same evening by a farm tenant of a private property located approximately 850 feet downstream from the School. The farm tenant reported that he could smell and see fuel oil in the intermittent stream flowing through his leased property. The farm tenant boards horses on the property and the tributary is the drinking water source for the horses. The farm tenant reported that one of these horses was suddenly listless and not eating.
3. On July 5, 2015, a licensed veterinarian examined the sickened horse. The veterinarian reported on July 7, 2016 that a fecal flotation read on July 6, 2016 showed a very thin oil residue, and that the horse had resumed grazing.
4. On July 5, 2016, DEQ staff inspected the School site and the downstream farm tenant property, and observed a heavy sheen and oil-saturated booms and sorbent pads in the tributary.
5. On July 8, 2016, DEQ staff inspected the School site and the downstream farm tenant property and observed free-phase fuel oil, dead vegetation, and two dead snakes in and around the tributary. Staff also observed petroleum-saturated sorbent pads within the tributary that were in need of replacement.
6. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
7. On July 8, 2016, DEQ identified the School Board as the Responsible Person (RP) for the petroleum release, and requested an Initial Abatement Report due August 7, 2016 and a Site Characterization Report due September 7, 2016.
8. During the period from July 5, 2016 to September 10, 2016, the School Board contracted consultant services that conducted or supervised the following activities:
  - a. Placed and maintained sorbent booms and pads along the tributary;



- b. Excavated and removed 24,06 tons of contaminated soil;
  - c. Conducted multiple flushing events to collect a total of 5,550 gallons of free product mixed with contaminated water;
  - d. Transported contaminated soils, liquids, and sorbent materials to approved disposal facilities;
  - e. Collected water samples at multiple locations for laboratory analysis for benzene, toluene, ethylbenzene, and xylenes (BTEX), methyl-tertiary-butyl-ether (MTBE), and naphthalene. Collected soil samples at multiple locations for laboratory analysis for Total Petroleum Hydrocarbons (TPH) – Diesel Range Organics (DRO).
9. On August 10, 2016, DEQ issued Notice of Violation No. 16-08-VRO-003 to the School Board for the discharge of oil into state waters.
10. On August 24, 2016, DEQ staff met with the School Board and the School Board's consultants to discuss the violation and ongoing containment and cleanup activities. The School Board's consultants summarized the corrective actions performed to date and conveyed that a combined initial abatement report/site characterization report would be submitted to DEQ no later than September 15, 2016. DEQ staff agreed to the submittal of a combined report and revised deadline.
11. On September 15, 2016, the School Board submitted a combined Initial Abatement and Site Characterization Report to DEQ. The report confirmed the release of an estimated 50 gallons of No. 2 fuel oil from a non-regulated 4,000 gallon AST system boiler supply line at the School. The report described corrective actions, sampling events, and laboratory analysis completed through September 10, 2016 and concluded that petroleum-contaminated soils remained at the School site and extended approximately 1,720 feet downstream within the tributary. The report contained the following recommendations:
- a. Continued sampling and analysis of water at 7 designated sampling points within the tributary extending from the School to a point approximately 1,720 feet downstream for a period of 3 months;
  - b. Installation of permanent livestock exclusion fencing of the tributary throughout the entirety of the downstream farm tenant property;
  - c. Installation of permanent alternative water sources for livestock at the downstream farm tenant property;
  - d. Continued installation of underflow dams and booms to collect and absorb residual oil.
12. On October 14, 2016, DEQ staff requested the School Board to submit a Site Characterization Report Addendum (SCRA) no later than December 14, 2016 to complete the characterization of the downstream tenant farm property impacts, to provide interim corrective actions to restore the tenant farm pasture to a useable condition, and to provide recommendations for additional remedial work if necessary.

13. On December 19, 2016, the School Board submitted a SCRA to DEQ. The report described the implementation of the recommendations contained in the Initial Abatement and Site Characterization Report, including installation of permanent livestock exclusion fencing and installation of permanent alternative water sources for livestock. The SCRA contained additional recommendations to monitor the remediation progress utilizing the collection of water samples at predesignated areas for BTEX, MTBE, and naphthalene analyses for three months (January, March, and May 2017) and the collection of sixteen soil samples from predesignated locations in May 2017 for TPH- DRO analysis.
14. On January 4, 2017, DEQ requested the School Board to submit by July 6, 2017 a Post Site Characterization Monitoring Report to include continued water and soil sampling at specific areas of the site through May 2017 and conclusions associated with corrective actions performed to date and recommendations for future remedial work if necessary.
15. Based on the results of the July 5, 2016 and July 8, 2016 inspections, the August 24, 2016 meeting, and the documentation submitted on September 15, 2016 and December 19, 2016, the State Water Control Board concludes that the School Board has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(4) through C(9), above.
16. In order for the School Board to complete its return to compliance, DEQ staff and representatives of the School Board have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders the School Board, and School Board agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$785.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The School Board shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

If the Department has to refer collection of moneys due under this Order to the Department of Law, the Highland County School Board shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the School Board for good cause shown by the School Board, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 16-08-VRO-003 dated August 10, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the School Board admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The School Board consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The School Board declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the School Board to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The School Board shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The School Board shall demonstrate that

such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The School Board shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;  
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

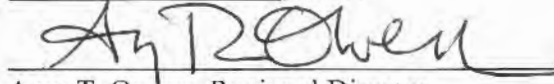
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the School Board. Nevertheless, the School Board agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after the School Board has completed all of the requirements of the Order;
  - b. the School Board petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the School Board.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the School Board from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the School Board and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the School Board certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the School Board to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the School Board.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the School Board voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23<sup>rd</sup> day of March, 2017.

  
Amy T. Owens, Regional Director  
Department of Environmental Quality

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Highland County School Board voluntarily agrees to the issuance of this Order.

Date: 1/23/2017 By: [Signature], Superintendent  
(Dr. Thomas Schott) (Superintendent)

Highland County School Board

Commonwealth of Virginia

City/County of Highland

The foregoing document was signed and acknowledged before me this 23<sup>rd</sup> day of January, 2017, by Dr. Thomas Schott who is Superintendent of the Highland County School Board, on behalf of the School Board.

Karen L. DeVore

Notary Public

150206

Registration No.

My commission expires: 1/31/2019

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

1. By July 6, 2017 submit to DEQ a Post-Site Characterization Monitoring Report that includes the following:
  - a. Results of surface water samples from the creek at locations Fairgrounds #2, Colaw #1, Colaw #2, Colaw #3 and Colaw #4. Samples are to be taken in January 2017, March 2017 and May 2017. The samples must be analyzed for MBTEX and naphthalene via EPA method 8021.
  - b. Results of soil samples at the location where petroleum-impacted soil was scarified to enhance natural attenuation. The samples are to be taken in May 2017. The sample locations must be similar to the 16 locations sampled in September 2016 to document contaminant conditions following enhanced natural attenuation activities. The samples must be analyzed for TPH-DRO via EPA method 8015b.
2. If determined necessary by DEQ and upon request of DEQ, perform additional monitoring or develop a Corrective Action Plan to ensure adequate protection of human health and the environment as determined by the board.

### **Contact**

Unless otherwise specified in this Order, the School Board shall submit all requirements of Appendix A of this Order to:

Tamara Jo Ambler  
Enforcement Specialist Senior  
Virginia Department of Environmental Quality  
540.574.7896 tamara.ambler@deq.virginia.gov  
4411 Early Road, P.O. Box 3000, Harrisonburg VA 22801  
FAX: 540.574.7878 WEB: www.deq.virginia.gov